

CREDIT UNION DIVISION[189]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 533.107, the Credit Union Division hereby gives Notice of Intended Action to amend Chapter 1, “Description of Organization,” and Chapter 17, “Investment and Deposit Activities for Credit Unions,” Iowa Administrative Code.

The amendments reflect changes made to the Division’s Web address, and to the federal rules for investments in credit unions, primarily to remove references to ratings by nationally recognized statistical rating organizations, in accordance with the federal Dodd-Frank Act.

The Division will fully consider any written suggestions or comments on these proposed amendments by any interested person on or before September 15, 2014. Written material should be directed to the Iowa Credit Union Division, 200 E. Grand, Suite 370, Des Moines, Iowa 50309-1827; fax (515)725-0519.

There will be a public hearing on September 15, 2014, at 1 p.m. in the conference room in the Division’s offices at 200 E. Grand, Suite 370, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

Any person who intends to attend the public hearing and has special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

The proposed amendments to Chapter 17 do not contain conditions for waiver, but would be subject to the provisions in 189—17.19(533) for Investment Pilot Programs and to the process outlined in Chapter 23, “Uniform Waiver and Variance Rules.”

After analysis and review of this rule making, the Division has determined that there will be no impact on jobs and no fiscal impact to the state.

These amendments are intended to implement Iowa Code sections 533.301(5) and 533.301(25).

The following amendments are proposed.

ITEM 1. Amend rule 189—1.4(17A,533) as follows:

189—1.4(17A,533) Forms and instructions. Information concerning the forms and instructions of the superintendent is available at the offices of the credit union division during usual business hours, 8 a.m. to 4 p.m. daily, excluding Saturdays, Sundays and holidays. Copies of the forms and instructions are also available at the credit union division’s Web site at <http://www.iacudiv.state-ia.us> <https://creditunions.iowa.gov/>.

This rule is intended to implement Iowa Code section 533.102.

ITEM 2. Amend rule **189—17.2(533)**, definitions of “Mortgage-related security” and “Small business-related security,” as follows:

“*Mortgage-related security*” means a security as defined in Section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)), e.g., ~~a privately issued security backed by first lien mortgages secured by real estate upon which is located a dwelling, mixed residential and commercial structure, residential manufactured home, or commercial structure, that is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization.~~

“*Small business-related security*” means a security as defined in Section 3(a)(53) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(53)), e.g., ~~a security that is rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, and represents an interest in one or more promissory notes or leases of personal property evidencing the obligation of a small~~

~~business concern and originated by an insured depository institution, insured credit union, insurance company, or similar institution which is supervised and examined by a federal or state authority, or a finance company or leasing company.~~ This definition does not include Small Business Administration securities permissible under the Federal Credit Union Act, 12 U.S.C. Section 1757(7).

ITEM 3. Adopt the following new definition of “Investment grade” in rule ~~189—~~**17.2(533)**:

“*Investment grade*” means the issuer of a security has an adequate capacity to meet the financial commitments under the security for the projected life of the asset or exposure, even under adverse economic conditions. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest on the security is expected. A credit union may consider any or all of the following factors, to the extent appropriate, with respect to the credit risk of a security: credit spreads; securities-related research; internal or external credit risk assessments; default statistics; inclusion on an index; priorities and enhancements; price, yield, and/or volume; and asset class-specific factors. This list of factors is not meant to be exhaustive or mutually exclusive.

ITEM 4. Amend paragraph **17.5(2)“b”** as follows:

b. Provided the amount of investment authority does not exceed ~~the greater of 10 percent of the credit union’s total assets or~~ 100 percent of its the credit union’s net worth, in the aggregate, at the time of delegation; ~~and.~~

ITEM 5. Rescind paragraphs **17.5(2)“c”** and **“d.”**

ITEM 6. Amend subrule 17.5(3) as follows:

17.5(3) ~~At the annual reevaluation of delegated investment authority, the credit union must comply with the 10 percent of total assets or~~ least annually, the credit union must adjust the amount of funds held under discretionary control to comply with the 100 percent of net worth cap. The credit union’s board of directors must receive notice as soon as possible, but no later than its the next regularly scheduled monthly board meeting, be informed of the amount exceeding the total asset or net worth cap and must notify in writing the superintendent within five days after the board meeting of the exception to this rule. The credit union must develop a plan to comply with the cap within a reasonable period of time.

ITEM 7. Amend paragraph **17.8(2)“c”** as follows:

c. If the broker-dealer is acting as the credit union’s counterparty, the ability of the broker-dealer and its subsidiaries or affiliates to fulfill commitments, as evidenced by capital strength, liquidity, and operating results. The credit union should consider current financial data, annual reports, ~~reports of nationally recognized statistical rating organizations~~ external assessments of creditworthiness, relevant disclosure documents, and other sources of financial information.

ITEM 8. Amend subrule 17.9(4) as follows:

17.9(4) Annually, the credit union must analyze the ability of the safekeeper to fulfill the safekeeper’s custodial responsibilities, as evidenced by capital strength, liquidity, and operating results. The credit union should consider current financial data, annual reports, ~~reports of nationally recognized statistical rating organizations~~ external assessments of creditworthiness, relevant disclosure documents, and other sources of financial information.

ITEM 9. Amend subrule 17.14(1) as follows:

17.14(1) *Variable rate investment.* A credit union may invest in a variable rate investment, as long as the index is tied to domestic interest rates ~~and not, for example,~~ Except in the case of U.S. Treasury inflation-protected securities, the variable rate investment cannot, for example, be tied to foreign currencies, foreign interest rates, domestic or foreign commodity prices, equity prices, or inflation rates. For purposes of this subrule, the U.S. dollar-denominated London Interbank Offered Rate (LIBOR) is a domestic interest rate.

ITEM 10. Amend subrule 17.14(5) as follows:

17.14(5) *Municipal security.* A credit union may purchase and hold a municipal security, as defined in the Federal Credit Union Act, 12 U.S.C. Section 1757(7)(K), ~~only if a nationally recognized statistical~~

rating organization has rated it in one of the four highest rating categories the credit union conducts and documents an analysis that reasonably concludes the security is at least investment grade. The credit union must also limit its aggregate municipal securities holdings to no more than 75 percent of the credit union's net worth and limit its holdings of municipal securities issued by any single issuer to no more than 25 percent of the credit union's net worth.

ITEM 11. Amend paragraphs **17.14(7)“i”** and **“k”** as follows:

i. The counterparty to the transaction: meets the minimum credit quality standards as approved by the credit union's board of directors;

~~(1) Has a long-term, senior, unsecured debt rating from a nationally recognized statistical rating organization of AA- (or equivalent) or better at the time of the transaction, and the contract between the counterparty and the credit union specifies that if the long-term, senior, unsecured debt rating declines below AA- (or equivalent) then the counterparty agrees to post collateral with an independent party in an amount fully securing the value of the option; or~~

~~(2) Posts collateral with an independent party in an amount fully securing the value of the option if the counterparty does not have a long-term, senior, unsecured debt rating from a nationally recognized statistical rating organization;~~

k. The aggregate amount of equity-linked member share certificates does not exceed 50 percent of the credit union's net worth;

ITEM 12. Amend subrule 17.14(8) as follows:

17.14(8) Debt obligations of U.S.-chartered corporations. An Iowa state-chartered credit union may invest in unsecured notes and acceptances, commonly referred to as “commercial paper” and “corporate bonds,” of U.S.-chartered corporations pursuant to Iowa Code section 533.301(5) “*h*” and “*i*” and this rule, only if:

a. The investment in a corporate bond debt obligation is rated in one of the two highest rating categories by a nationally recognized statistical rating organization investment grade and has a maturity of less than five years;

b. The investment in a commercial paper debt obligation is rated in one of the four highest rating categories by a nationally recognized statistical rating organization investment grade and has a maturity of less than one year;

c. An investment in a nonrated equivalent value issue of a commercial paper debt obligation shall otherwise adhere to the limitations of rated issues be investment grade. ~~In lieu of the required rating by a nationally recognized statistical rating organization, a~~ A credit union shall retain documentation supporting the method used in determining the equivalent rating its determination and the current and previous two years of year-end financial statements which indicate acceptable operating performance of the issuing U.S. corporation;

d. ~~Subsequent If, subsequent to the date of purchase but prior to the date of maturity, the rating is downgraded two or more categories by the same nationally recognized statistical rating organization used when the investment was purchased, no longer meets the investment grade standard and the investment exceeds the credit union's net worth by 5 percent or more, the credit union shall have no more than 30 days to divest of the security unless the credit union seeks and receives a waiver from the superintendent as provided by rule;~~

e. The total investment by a credit union in debt obligations in a lone U.S. corporation and its subsidiaries shall not exceed 25 percent of the credit union's net worth;

f. The total aggregate investment by a credit union in debt obligations of U.S. corporations and their subsidiaries shall not exceed the lesser of 100 percent of the credit union's net worth or 20 percent of the credit union's investment portfolio;

g. An investment will be considered speculative and unauthorized if it contains any of the following characteristics, and the credit union shall be required to divest of the security in accordance with 17.14(8) “*d*” without an opportunity of waiver:

(1) It is issued by a business entity not recognized in the market place or by other than a U.S.-chartered corporation, or by both;

- (2) It has a maturity that exceeds that established in this subrule; or
- (3) It is issued to cover or underwrite foreign market operations, or for new-line products or services, or both, which exceed 25 percent of the investment offering;

h. If the net worth level of a credit union falls or remains below an amount which causes the limitations of this subrule to be exceeded for two consecutive quarters, and the amount of difference is 5 percent or more of the net worth, the credit union shall divest of a sufficient amount of debt obligations so the credit union no longer exceeds the limitations or seek a waiver from the superintendent as provided by rule;

i. A corporate credit union chartered in accordance with Iowa Code chapter 533 is exempt from the provisions and limitations of this subrule and, instead, shall have the powers, restrictions and obligations contained in NCUA rules and regulations, 12 CFR Part 704, for federally insured corporate credit unions.

ITEM 13. Adopt the following **new** subrules 17.14(9) to 17.14(11):

17.14(9) *Mortgage note repurchase transactions.* A credit union may invest in securities that are offered and sold pursuant to Section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5), only as a part of an investment repurchase agreement under subrule 17.13(3), subject to all of the following conditions:

a. The aggregate of the investments with any one counterparty is limited to 25 percent of the credit union's net worth and 50 percent of its net worth with all counterparties.

b. At the time the credit union purchases the securities, the counterparty, or a party fully guaranteeing the counterparty, must meet the minimum credit quality standards as approved by the credit union's board of directors.

c. The credit union must obtain a daily assessment of the market value of the securities under paragraph 17.13(3) "a" using an independent qualified agent.

d. The mortgage note repurchase transaction is limited to a maximum of 90 days.

e. All mortgage note repurchase transactions will be conducted under triparty custodial agreements.

f. A credit union must obtain an undivided interest in the securities.

17.14(10) *Zero-coupon investments.* A credit union may only purchase a zero-coupon investment with a maturity date that is no greater than ten years from the related settlement date, unless authorized by the superintendent.

17.14(11) *Commercial mortgage-related security (CMRS).* A credit union may purchase a CMRS that would be a permissible investment for a federal credit union under 12 U.S.C. Section 1756(7)(E) or Section 1756(15)(B) subject to all of the following conditions:

a. The credit union conducts and documents a credit analysis that reasonably concludes the CMRS is at least investment grade.

b. The CMRS meets the definition of commercial mortgage security in 189—17.2(533).

c. The CMRS's underlying pool of loans contains more than 50 loans with no one loan representing more than 10 percent of the pool.

d. The aggregate amount of private label CMRS purchased by the credit union does not exceed 25 percent of its net worth, unless otherwise authorized by the superintendent.

ITEM 14. Rescind and reserve subrules **17.16(2)** and **17.16(4)**.